

KAREN P. HEWITT  
United States Attorney  
JAMES P. MELENDRES  
Assistant United States Attorney  
California State Bar No. Pending  
United States Attorney's Office  
Federal Office Building  
880 Front Street, Room 6293  
San Diego, California 92101  
Telephone: (619) 557-6327

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

08CR2833-JM-2

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GABRIEL OJEDA-GRACIA (2), )  
 )  
Defendant. )

Magistrate Case No. 08MJ2391

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and James P. Melendres, Assistant United States Attorney, and defendant GABRIEL OJEDA-GRACIA, by and through and with the advice and consent of defense counsel, Brian P. Funk, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(i) and (v)(II).

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JPME:lg:8/7/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **September 3, 2008**.

6           4. The material witnesses, Delia Lopez-Leal, Olga Aguilar-Alvarez and Rodrigo Garcia-  
7 Carrera, in this case:

8               a. Are aliens with no lawful right to enter or remain in the United States;

9               b. Entered or attempted to enter the United States illegally on or about  
10 July 31, 2008;

11              c. Were found in a 28' Panga boat approximately 20 miles off of the United  
12 States coastline in International waters at coordinates: 32'40.8N by 117'27.4W, and for whom  
13 codefendant Jesus Aguilar-Olivas was the pilot and defendant was the copilot; and further, defendant  
14 knew of the fact that they were aliens with no lawful right to enter or remain in the United States;

15              d. Were paying or having others pay on their behalf \$4,000-\$5,000 to others to  
16 be brought into the United States illegally and/or transported illegally to their destination therein;  
17 and,

18              e. May be released and remanded immediately to the Department of Homeland  
19 Security for return to their country of origin.

20           5. After the material witnesses are ordered released by the Court pursuant to this  
21 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
22 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
23 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

24               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
25 substantive evidence;

26               b. The United States may elicit hearsay testimony from arresting agents  
27 regarding any statements made by the material witness(es) provided in discovery, and such testimony

1 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
2 of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT  
17 United States Attorney

18 Dated: 8/14/08.

James M. Becker for  
19 JAMES P. MELENDRES  
Assistant United States Attorney

20 Dated: 8/13/08.

Brian P. Funk  
21 BRIAN P. FUNK  
Defense Counsel for GABRIEL OJEDA-GRACIA

22 Dated: 8/13/08.

Gabriel Ojeda-Gracia  
23 GABRIEL OJEDA-GRACIA  
24 Defendant

25  
26 I translated document

27 Maria C. Brower  
28 Maria C. Brower

Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Gabriel Ojeda-Gracia (2)

**ORDER**

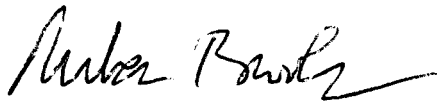
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 8/26/2008.

  
United States Magistrate Judge